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| 10/637,161      | 08/08/2003  | Herb M. Poplawski    | 36400.35US2         | 2925             |

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EXAMINER

LEWIS, TISHA D

ART UNIT PAPER NUMBER

3681

DATE MAILED: 06/27/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

**Office Action Summary**

Application No.

10/637,161

Applicant(s)

POPLAWSKI ET AL.

Examiner

TISHA D. LEWIS

Art Unit

3681

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☐ Responsive to communication(s) filed on \_\_\_\_.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 1-22 is/are pending in the application.  
4a) Of the above claim(s) \_\_\_\_ is/are withdrawn from consideration.
- 5) ☒ Claim(s) 1-8 and 19-22 is/are allowed.
- 6) ☒ Claim(s) 9-11 and 14-18 is/are rejected.
- 7) ☒ Claim(s) 12 and 13 is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).  
a) ☐ All b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- |   |  |
|---|--|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892)  | 4) <input type="checkbox"/> Interview Summary (PTO-413)<br>Paper No(s)/Mail Date. ____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)                                  | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152)            |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)<br>Paper No(s)/Mail Date ____ | 6) <input type="checkbox"/> Other: ____  |

### **DETAILED ACTION**

The following is a response to the amendment received on April 12, 2005 which has been entered.

#### ***Response to Amendment***

Claims 1-22 are pending in the application.

-The objection to the specification has been withdrawn due to applicant correcting a grammar error as indicated in the office action mailed on January 27, 2005.

-The 102(b) and 102(e) rejections of claims 1 and 2 has been withdrawn due to applicant amending claim 1 over the prior art used in the rejection.

-The 103(a) rejection of claims 3-8 has been withdrawn due to the withdrawal of the 102 rejections as stated above.

#### ***Claim Rejections - 35 USC § 112***

The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

Claims 9-18 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

As to claim 9, lines 10-12, the limitation recites "a second portion located between the transmission housing and the at least one vertically oriented side frame member", it is unclear as to how this portion can be located between the housing and side frame member if the housing is directly mounted to the frame member. If the first portion is located inside the transmission housing, then this portion would actually be

Art Unit: 3681

located between the two parts of the housing, not the housing and frame. The drawings seem to suggest that the entire arm is mounted to an outside of the transmission housing wherein the limitation of having the second portion located between the housing and frame would be valid, but then the limitation of having the first portion located inside the housing would be unclear. Examiner suggest applicant amend claim 9 to maybe describe what portion of the housing is directly connected to the frame member.

***Claim Rejections - 35 USC § 103***

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 9-11 and 14-17 are rejected under 35 U.S.C. 103(a) as being unpatentable over Peter in view of Hauser et al ('531) and over Osuga in view of Hauser et al. As to claim 9, Peter discloses a vehicle having a vehicle frame (4) with two vertically oriented side frame members (71, Figure 2), a transmission housing (52) directly mounted to a vertical face of the member, a hydrostatic transmission (50) mounted in the housing with a pump (via 56) and a motor (via 57) connected through a hydraulic circuit and an axle (via 6) driven by the motor and extending parallel to the frame member, but does not disclose a control arm engaged to a control mechanism.

Osuga et al discloses a vehicle having a vehicle frame (5) with two vertically oriented side frame members (5A, 5B), a transmission housing (6A) directly mounted to

Art Unit: 3681

a vertical face of the member (column 3, lines 41-43), a hydrostatic transmission (7) mounted (integrated) in the housing with a pump (7P) and a motor (7M) connected through a hydraulic circuit and an axle (20) driven by the motor and extending parallel to the frame member, but does not disclose a control arm engaged to a control mechanism.

Hauser et al discloses a vehicle having a transmission housing (21, 22) split vertically comprising a hydraulic motor and pump connected through a circuit, an axle shaft (90) driven by the motor and extending perpendicular to the vertical housing and a control arm (108) engaged to the housing (22) and mounted partially inside the housing (shaft of control arm) and partially outside the housing (lever of control arm) which would be between the housing and frame.

It would have been obvious to a person of ordinary skill in the art at the time the invention was made to provide Peter and Osuga et al with a control arm engaged to the transmission in view of Hauser et al to limit rotational movement of the transmission output.

As to claim 10, Peter and Osuga et al discloses the control mechanism being in the form of a rotatable swash plate.

As to claim 11, Peter and Osuga et al discloses a motor mounted in the housing in fluid communication with the pump and the axle shaft mounted in and extending from the housing and driven by the motor.

As to claim 14, Peter and Osuga et al discloses a transmission having a hydraulic motor and pump, but does not disclose the structure of how the motor and pump are connected.

Hauser et al discloses a transmission having a center section (10) with porting, a pump running surface and a motor running surface.

It would have been obvious to a person of ordinary skill in the art at the time the invention was made to provide Peter and Osuga et al with a center section having a pump and motor running surface in view of Hauser et al to hydraulically connect the pump and motor for operation to the axles.

As to claim 15, Peter and Osgua et al discloses a transmission having a hydraulic motor and pump, but does not disclose the structure of how the motor and pump are connected.

Hauser et al discloses a transmission having a center section (10) with porting, a pump running surface perpendicular to the vertical transmission housing (21, 22) and a motor running surface horizontal to the housing.

It would have been obvious to a person of ordinary skill in the art at the time the invention was made to provide Peter and Osuga et al with a center section having a pump oriented vertically to the frame and a motor oriented horizontal to the frame in view of Hauser et al to reduce the height of the transmission in the vertical direction.

As to claim 16, Peter and Osuga et al discloses a motor shaft driven by the motor, a reduction gear (Figure 3 in Osuga and 15 in Peter) driven by the motor shaft, and a bull gear (90) driven by the reduction gear and linked to the axle shaft.

As to claim 17, Peter discloses the motor shaft being parallel to the axle shaft.

Claim 18 is rejected under 35 U.S.C. 103(a) as being unpatentable over Peter and Osuga et al in view of Hauser et al as applied to claim 9 above, and further in view of Yoshina et al. Peter and Osuga et al in view of Hauser discloses a transmission housing secured to a frame member, but the housing does not disclose a boss.

Yoshina et al discloses a snow thrower auger (46) driven by an engine (E), a hydraulic motor (M) driven by the engine and a transmission housing (1, 2) secured to a frame (27) by brackets (27a) which are secured to bosses (2a) formed with the transmission housing.

It would have been obvious to a person of ordinary skill in the art at the time the invention was made to provide Peter and Osuga et al in view of Hauser et al with bosses formed with the transmission housing in view of Yoshina et al to eliminate additional (separate) components used to secure the housing to the frame member.

### ***Response to Arguments***

Applicant's arguments filed April 12, 2005 have been fully considered but they are not persuasive. As to applicant's argument (page 12) that the references used in the rejection don't use an integrated transmission mounted to a transmission housing which is directly mounted to a frame member....., is acknowledged, however; applicant's specification (page 1, lines 7-9) disclose that integrated transmissions are well known in the prior art and since applicant doesn't point out in the arguments what the exact differences are between the prior art references used in the rejection and the present invention, the limitations are still met by the references. Just stating that the

transmission (of the prior art references) is mounted to the vehicle frame distinctively different from that required by claim 9 is not a full response to the rejection. In response to applicant's arguments against the Hauser reference individually, one cannot show nonobviousness by attacking references individually where the rejections are based on combinations of references. See *In re Keller*, 642 F.2d 413, 208 USPQ 871 (CCPA 1981); *In re Merck & Co.*, 800 F.2d 1091, 231 USPQ 375 (Fed. Cir. 1986), the Hauser reference was used as a secondary reference to disclose that it is well known in the art to have a control arm mounted to a transmission housing. Although Hauser doesn't disclose a vehicle frame member, it would be obvious that the Hauser transmission would be mounted to some type of frame member in order to drive the vehicle. Therefore; since the primary references to Peter and Osuga disclose a vertical frame member having a directly mounted transmission, the combination with Hauser would suggest that it is obvious to have a control arm disposed between the housing and a vehicle frame.

#### ***Allowable Subject Matter***

Claims 1-8 and 19-22 are allowed.

Claims 12 and 13 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

#### **FACSIMILE TRANSMISSION**

Submission of your response by facsimile transmission is encouraged. Group 3600's facsimile number is **(703) 872-9326 before final and 703-872-9327 after final**. Recognizing the fact that reducing cycle time in the processing and examination of patent applications will effectively increase a patent's term, it is to your benefit to submit



Art Unit: 3681

responses by facsimile transmission whenever permissible. Such submission will place the response directly in our examining group's hands and will eliminate Post Office processing and delivery time as well as the PTO's mail room processing and delivery time. For a complete list of correspondence not permitted by facsimile transmission, see MPEP 502.01. In general, most responses and/or amendments not requiring a fee, as well as those requiring a fee but charging such fee to a deposit account, can be submitted by facsimile transmission. Responses requiring a fee which applicant is paying by check should not be submitting by facsimile transmission separately from the check.

Responses submitted by facsimile transmission should include a Certificate of Transmission (MPEP 512). The following is an example of the format the certification might take:

I hereby certify that this correspondence is being facsimile transmitted to  
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Typed or printed name of person signing this certificate:

\_\_\_\_\_

\_\_\_\_\_

(Signature)

If your response is submitted by facsimile transmission, you are hereby reminded that the original should be retained as evidence of authenticity (37 CFR 1.4 and MPEP 502.02). Please do not separately mail the original or another copy unless required by the Patent and Trademark Office. Submission of the original response or a follow-up copy of the response after your response has been transmitted by facsimile will only cause further unnecessary delays in the processing of your application; duplicate responses where fees are charged to a deposit account may result in those fees being charged twice.

### ***Conclusion***

**THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the advisory action is not mailed until after the end of the **THREE-MONTH** shortened statutory period, then the

Art Unit: 3681


shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to TISHA D. LEWIS whose telephone number is 571-272-7093. The examiner can normally be reached on M-Thur 6 AM TO 2:30 PM.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, CHARLES A. MARMOR can be reached on 571-272-7095. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

Tdl  
June 23, 2005

  
TISHA LEWIS  
PRIMARY EXAMINER  
AU 3681 6/23/05